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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,825	04/25/2001	Tetsuya Hirakawa	Q64165	6097

7590 03/18/2005

SUGHRUE, MION, ZINN, MACPEAK & SEAS  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037-3202

EXAMINER
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GART, MATTHEW S

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/840,825

Applicant(s)

HIRAKAWA, TETSUYA

Examiner

Matthew s Gart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/14/2003</u> | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

New Claims 14-15 have been added

Claims 1-15 are pending in the instant application.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin US Patent No. 6,606,607 in view of Harrington US Patent No. 6,161,099.**

Referring to claim 1. Martin discloses a sales system for selling a product by using the Internet, comprising:

- A user terminal connected to the Internet (Martin: "buyer interface **16**"); and
- A supplier terminal (Martin: "administrator interface **14**") which randomly selects a price of the product from a plurality of prices within a predetermined price range (Martin: column 2, lines 4-34, "Calculating a virtual minimum acceptable price (VMAP) for the product, where VMAP is a randomly calculated percent greater than MAP for the product..."), and presents the selected price on the user terminal together with a predetermined term of validity (Martin: column 6, lines

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20-63, "In one embodiment of the invention, the predetermined time period is set at one hour.")

Martin does not expressly disclose a supplier terminal, which upon receiving an application for purchasing the product from the user terminal via the Internet, charges a commission fee from the user operating the user terminal.

Harrington discloses a supplier terminal, which upon receiving an application for purchasing the product from the user terminal via the Internet, charges a commission fee from the user operating the user terminal (Harrington: column 5, lines 1-10).

It would have been obvious to one of ordinary skill in the art to have provided the method and system of Martin to have incorporated a commission scheme of the type demonstrated by Harrington in order to allow each user to gather a price including all calculations of cost (Harrington: column 5, lines 1-10).

Referring to claim 2. Martin in view of Harrington discloses a system according to claim 1 as indicated supra. Harrington further discloses a sales system, wherein the supplier terminal stores the standard price of the product, and the commission fee is determined by multiplying a predetermined rate to the standard price (Harrington: column 5, lines 1-10).

Referring to claim 3. Martin further discloses a sales system, comprising an audit authority terminal for supervising the settings of the prices by the supplier terminal (Martin: Figure 9B).

Referring to claim 4. Martin in view of Harrington discloses a system according to claim 1 as indicated supra. Martin does not expressly disclose a reselling function for

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reselling the privilege to purchase the product at the price presented by the supplier terminal to a third person. Harrington discloses a sale system, comprising a reselling function for reselling the privilege to purchase the product at the price presented by the supplier terminal to a third person (Harrington: column 6, lines 10-26, "The present invention concerns original issuer municipal bond auctions in which a municipality offers its bonds to purchasers, generally underwriters who resell them to the public."). It would have been obvious to one of ordinary skill in the art to have provided the method and system of Martin to have incorporated the reselling function of the type demonstrated by Harrington because with auctions of various financial instruments there is a significant difference between the original issuer and subsequent resale of portions of this instrument in the secondary market (Harrington: column 2, lines 49-60).

Referring to claims 5-8. Claims 5-8 are rejected under the same rationale as set forth above in claims 1-4.

Referring to claim 9. Martin in view of Harrington discloses a system according to claim 1 as indicated supra. Harrington further discloses a sale system wherein a price history of the product is presented on the user terminal together with the selected price of the product (Harrington: column 7, lines 34-53, "Bid Histories").

It would have been obvious to one of ordinary skill in the art to have provided the method and system of Martin to have incorporated a price history presentation scheme of the type demonstrated by Harrington in order to allow each user to gather a price including all calculations of cost (Harrington: column 5, lines 1-10).

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Referring to claim 10. Martin in view of Harrington discloses a system according to claim 1 as indicated supra. Harrington further discloses a sale system wherein the commission fee is non-refundable (Harrington: column 5, lines 1-10).

Referring to claim 11. Martin further discloses a system wherein the predetermined term of validity contains an expiration date, such that a user cannot purchase the product after the expiration date (Martin: column 6, lines 20-63).

Referring to claim 12. Claim 12 is rejected under the same rationale as set forth above in claim 9.

Referring to claim 13. Claim 13 is rejected under the same rationale as set forth above in claim 9.

Referring to claim 14. Martin discloses a method wherein the predetermined term of validity contains an expiration date, such that a user cannot purchase the product after the expiration date (Martin: column 1, lines 20-36).

Referring to claim 15. Martin discloses a storage medium wherein the predetermined term of validity contains an expiration date, such that a user cannot purchase the product after the expiration date (Martin: column 1, lines 20-36).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-13 have been considered but are not persuasive.

The Applicant argues that Martin does not disclose a supplier terminal that randomly selects a price of a product from a plurality of prices within a predetermined

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price range, and presents the selected price on the user terminal together with a predetermined term of validity.

The Examiner notes, bids are generated at the buyer's end, or terminal, while offers, counter offers and rejections are generated at a central location where the auction administrator is located. Most current on-line auction systems involve many bidders submitting bids against one another over a specified time period for a given item (Martin: column 1, lines 20-36).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

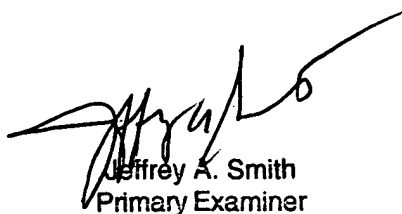
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew s Gart whose telephone number is 703-305-5355. The examiner can normally be reached on 8:30AM to 5:00PM m-f.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MSG  
Patent Examiner  
March 11, 2005



Jeffrey A. Smith  
Primary Examiner